

## **200.0500(d) BASE YEAR VALUE TRANSFER – CONTAMINATED PROPERTY**

*See Newly Constructed Property*

**200.0520 Comparability.** There are two separate property tax relief provisions in section 2(i) of article XIII A of the California Constitution and Revenue and Taxation Code section 69.4: one, a transfer of base year value if the owner of the contaminated property elects to sell or otherwise transfer the property; and the other, an exclusion from new construction if the owner elects to repair or reconstruct a substantially damaged or destroyed structure on the same contaminated property after the remediation of the environmental problems. The comparison tests are different for each provision. With respect to the transfer of base year value (section 2(i)(1)(A)), the replacement real property must have "a fair market value that is equal to or less than the fair market value of the qualified contaminated property if that property were not contaminated." Sec. 2(i)(1)(A)(i). Under the exclusion from new construction, "the repaired or replacement structure [must be] similar in size, utility, and function to the original structure." Sec. 2(i)(1)(B).

In this regard, the comparability test for the transfer of base year value set forth in section 2(i) is comparable to that set forth in section 2(a) of article XIII A and Revenue and Taxation Code section 69.5 with respect to transfers of base year values by persons over the age of 55 years ("dwelling of equal or lesser value"); and in section 2(e) of article XIII A and Revenue and Taxation Code section 69.3 with respect to property substantially destroyed by a disaster ("property of equal or lesser value"). Pursuant to those provisions, the claimant is ineligible for the exclusion if the value of the replacement property exceeds that of the original property, as defined by the Legislature. On the other hand, the comparability test for the repaired or replacement structure new construction exclusion is comparable to that set forth in section 2(d) of article XIII A and Revenue and Taxation Code section 68 with regard to property taken by eminent domain ("comparable property" "similar in size, utility, and function"), which the Legislature permits as a transferable value, with any value over and above that comparable value assessed at current market value. C 9/6/2000.

**200.0560 Replacement Property.** Property owner Z owns two lots across the street from each other. Before contamination was discovered, one lot was vacant, and the other had two structures, a single family residence and a garage with a living unit over it. Both structures were demolished due to the remediation. Z intends to build a retail store with a living unit over it on the lot that was formerly vacant. No base year value may be transferred to the vacant lot pursuant to section 2(i) of article XIII A of the California Constitution because both lots were owned by the same person and because the lot was not acquired within five years after the sale or transfer of the contaminated property. Neither will the new structure qualify for the new construction exclusion because the lot on which it is being built was vacant at the time of the remediation and thus, the new structure is not the repair or replacement of a damaged or destroyed structure on the qualified contaminated property. C 9/6/2000.

**200.0580 Value to Transfer.** The value that can be transferred from a contaminated property to a replacement property pursuant to section 2(i) of article XIII A of the California Constitution is the original factored base year value of the contaminated property, not its reduced assessed value based upon the reduction in fair market value due to the contamination. C 1/26/99.